

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

Halperin

B-220961

FILE:

DATE: November 21, 1985

R.S. Data Systems

MATTER OF:

DIGEST:

1. Protest that contracting officer failed to comply with Federal Acquisition Regulation § 19.602-1(c)(2), by not including a letter from the protester with the agency referral to the Small Business Administration (SBA) for a certificate of competency (COC) determination is dismissed because the contracting officer is not required to refer to SBA information which does not support the contracting officer's determination that the prospective contractor is nonresponsible and because the burden is on the contractor to prove its competency to the SBA through its application for a COC.
2. When a protest is without merit, GAO will deny a claim for attorney's fees and bid preparation costs.

R.S. Data Systems (RSD), a section 8(a) minority contractor, protests the rejection of its bid under invitation for bids (IFB) No. 85-877 issued by the Department of Housing and Urban Development (HUD).

We dismiss the protest without receipt of a contracting agency report for the reasons indicated below. See section 21.3(f) of the Bid Protest Regulations, 4 C.F.R. § 21.3(f) (1985).

HUD conducted a preaward survey of RSD's facility and the contracting officer determined that RSD was not a responsible contractor for this procurement. In accordance with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.602-1(c) (1984), to assist the Small Business Administration (SBA) in making a certificate of competency (COC) determination, the contracting officer forwarded information that supported his determination that RSD was not responsible. After RSD applied for a COC, the Philadelphia

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Regional Office of the SBA decided that RSD was not competent to perform the contract work and refused to issue a COC to RSD.

After RSD learned that SBA refused to issue a COC, RSD allegedly discovered that the referral from HUD to SBA did not include a copy of the solicitation and a letter which RSD gave to the members of the HUD preaward survey team which in RSD's opinion would support RSD's view that it is a responsible contractor. RSD contends that the contracting officer's failure to forward to SBA the letter favorable to RSD and a copy of the IFB violated FAR, § 19.602-1(c)(2).

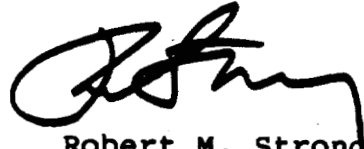
FAR, § 19.602-1(c)(2), requires a contracting officer to refer to SBA for a COC determination:

"A copy of the solicitation, drawings and specifications, preaward survey findings, pertinent technical and financial information, abstract of bids (if available), and any other pertinent information that supports the contracting officer's determination."

The protester argues that the intent of this provision is for the contracting officer "to provide the SBA with every piece of data which is relevant to the decision of the contracting officer" and, therefore, the contracting officer should have included the RSD letter in its referral to SBA. However, we view this provision to merely require a contracting officer to supply the SBA with "pertinent information that supports the contracting officer's determination" that the contractor is not responsible. Therefore, the contracting officer was not required to supply the SBA with information tending to show that the contractor is responsible, such as the RSD letter, since the burden is on the contractor to prove through its COC application to SBA that it is responsible. See FAR, § 19.602-2(a); JBS Construction Co., B-187574, Jan. 31, 1977, 77-1 C.P.D. ¶ 79; Shiffer Industrial Equipment, Inc., B-184477, Oct. 28, 1976, 76-2 C.P.D. ¶ 366. Concerning the alleged failure of the SBA to receive a copy of the IFB, FAR, § 19.602-1(c)(2), does require the contracting officer to send a copy of the solicitation to SBA. However, if none was sent, we do not consider it material, since we are not aware of anything that would have precluded SBA from obtaining a copy from HUD if it was necessary for its COC determination.

The protester has requested that it be paid attorney's fees and bid preparation expenses. However, since we find the protest to be without merit, we deny the claim for

costs. Monarch Engineering Company, B-218374, June 21,
1985, 85-1 C.P.D. ¶ 709.

A handwritten signature in black ink, appearing to read 'R. Strong', with a stylized, cursive script.

Robert M. Strong
Deputy Associate
General Counsel